

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

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William H. Payne,

Plaintiff,

vs.

Sandia Corporation - Sandia National Laboratories; American Telephone and Telegraph Corporation; Lockheed Martin Corporation; Krehbiel, Bannerman & Horn; John A. Bannerman; Charles Burtner; Lorenzo F. Garcia; Michael G. Robles; Carol Lisa Smith,

Defendants.

CIV 00 1677

RON J. SWET

NOTICE OF REMOVAL

The United States of America, acting on behalf of its employees, Charles Burtner and United States Magistrate Judge Lorenzo F. Garcia,<sup>1</sup> gives notice of the removal to this Court, pursuant to 28 U.S.C. §§ 1441 and 1442(a)(1) of a civil action commenced in the Second Judicial District Court for the County of Bernalillo, State of New Mexico, Cause No. CV-2000-10278, entitled William H. Payne v. Sandia Corporation - Sandia National Laboratories, American Telephone and Telegraph Corporation, Lockheed Martin Corporation, Krehbiel, Bannerman & Horn, John A. Bannerman, Charles Burtner, Lorenzo F. Garcia, Michael G. Robles, Carol Lisa Smith and shows:

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<sup>1</sup>These Defendants have not been properly served, nor has the United States, and they reserve their right to raise this as an affirmative defense after removal.

1. A civil action has been brought in the Second Judicial District Court for the County of Bernalillo, State of New Mexico, Cause No. CV-2000-10278, and is now pending.

2. Attached to this Notice of Removal as **Exhibit 1** are copies of all pleadings that have been received by and are in the possession of the United States in this action.

3. In the initial State Court action, Plaintiff appears to complain of defamation and harassment. Defendant Charles D. Burtner is the Director of the Phoenix District Office of the Equal Employment Opportunity Commission. Defendant Lorenzo F. Garcia is a United States Magistrate Judge in the United States District Court for the District of New Mexico. All bases of Plaintiff's Complaint involve conduct of Defendants during the period they were acting in their official capacities.

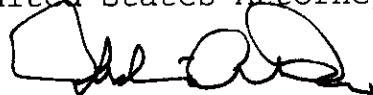
4. The State Court action is properly subject to removal because under 28 U.S.C. § 1442(a)(1), a civil action commenced against an employee of an agency of the United States for any act under color of such office may be removed to federal court. The right of removal is absolute when the suit in state court is for any act under color of federal office. Willingham v. Morgan, 395 U.S. 402, 406 (1969). Defendants' contact with Plaintiff throughout the times complained of were while they were performing their official duties. See id. at 409.

5. Additionally, removal is proper under 28 U.S.C. § 1441 because this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331. This action arises out of the administrative and judicial proceedings of a federal agency and the federal court conducted pursuant to federal regulations. This Court has original jurisdiction of actions arising out of the laws of the United States. 28 U.S.C. § 1331. To the extent, if any, Plaintiff complains of common law torts, this action is also controlled by the Federal Tort Claims Act, 28 U.S.C. §§ 1346 and 2671 et seq. and arises under federal law.

WHEREFORE, the United States gives notice that Cause No. CV-2000-10278 in the Second Judicial District Court for the County of Bernalillo, State of New Mexico, is removed to this Court.

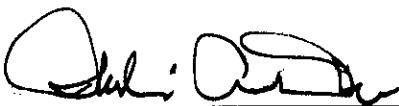
Respectfully submitted,

NORMAN C. BAY  
United States Attorney



PHYLLIS A. DOW  
Assistant U.S. Attorney  
P.O. Box 607  
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(505) 346-7274

I HEREBY CERTIFY that on November 27, 2000, a true copy of the foregoing pleading was mailed to William H. Payne, 13015 Calle de Sandias, N.E., Albuquerque, New Mexico 87111, and Robert M. St. John, Esq., Rodey, Dickason, Sloan, Akin & Robb, P.A., P.O. Box 1888, Albuquerque, New Mexico 87103.



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PHYLLIS A. DOW  
Assistant U.S. Attorney

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THE EXHIBITS ATTACHED TO THIS  
PLEADING ARE TOO VOLUMINOUS TO  
SCAN. SAID EXHIBITS ARE ATTACHED  
TO THE ORIGINAL PLEADING IN THE  
CASE FILE WHICH IS LOCATED IN THE  
RECORDS DEPARTMENT, U.S.  
DISTRICT COURT CLERK'S OFFICE.